

STATE OF MICHIGAN
COURT OF APPEALS

MARY M. DEYARMOND,

Plaintiff/Counter-Defendant-
Appellee,

v

GREGORY W. DEYARMOND,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

January 13, 2005

No. 248929

Eaton Circuit Court

LC No. 02-00295-DM

Before: Jansen, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant Gregory W. Deyarmond appeals as of right from a judgment of divorce. The trial court granted the parties joint legal custody of their two minor children, Benjamin and Robin, and granted physical custody to plaintiff. In addition, the trial court ordered that plaintiff pay spousal support to defendant for three years, consisting of \$250 a month for the first year, \$150 a month for the second year, and \$50 a month for the third year. We remand for correction of the inappropriate ban on modification of spousal support in the judgment of divorce but otherwise affirm.

Defendant first argues that the trial court did not have jurisdiction to remove him as co-custodian of C & M Benson Investments, LLC. We disagree. “Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court” MCL 600.605. The probate court has exclusive jurisdiction over a “proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary” MCL 700.1302(b). However, defendant’s role as custodian over the children’s shares in the LLC does not constitute a trust, and the trial court properly acted within its jurisdiction in removing defendant from that role.

Defendant also claims that the trial court improperly determined the rights of third parties when it removed defendant as cocustodian. We disagree. “Generally, a court has no authority to adjudicate the rights of third parties in divorce actions.” *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991). However, in this case, the trial court did not determine the rights of

third parties to the divorce. Rather, it determined the property rights and authority of defendant and plaintiff, as they related to the limited liability corporation at issue.

Defendant next argues that the award of spousal support in this case was inequitable. This Court reviews the trial court's factual findings regarding an award of alimony for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The findings are presumptively correct, and the burden is on the appellant to show clear error. *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990). A finding is clearly erroneous if this Court "is left with a definite and firm conviction that a mistake had been made." *Moore, supra* at 654-655. "If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts." *Id.* at 655. The trial court's decision regarding alimony must be affirmed unless this Court is firmly convinced that it was inequitable. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Moore, supra* at 654.

Defendant argues that there is a great disparity in incomes between the parties and no realistic way for him to make up the difference because of his inability to work. The trial court determined that defendant could still work and imputed income to him based on his ability to work. The trial court's finding was supported by evidence that defendant could still work, despite his health problems. In addition, the trial court's award of spousal support was fair and equitable given the relevant factors, including the trial court's reasonable determination that defendant was at fault for the divorce.

Defendant also argues that the trial court erred by making the spousal support non-modifiable. An "alimony award without any mechanism for modification due to a change of circumstances" constitutes an abuse of discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988); see also *Staple v Staple*, 241 Mich App 562; 616 NW2d 219 (2000). At the March 27, 2003 motion hearing, the trial court noted with respect to the spousal support that "I'll take another look at that if you no longer teach or you no longer receive your Social Security disability." However, the judgment of divorce states that the payments are non-modifiable. Therefore, we remand for amendment of the trial court's order to provide that the award of spousal support is modifiable upon a showing of changed circumstances.

Finally, defendant claims that the trial court clearly erred in its findings regarding the division of property. This Court reviews the trial court's findings of fact under the clearly erroneous standard. *Sparks, supra* at 151. A factual finding is clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002).

Defendant first challenges the trial court's valuation of certain assets. However, we find that the trial court's determination of the value of the items was supported by evidence at trial and was not clearly erroneous. Similarly, there was no clear error in the trial court treating each party's jewelry as separate property.

Defendant also argues that the trial court clearly erred by ordering defendant to reimburse plaintiff for certain costs. However, all of the expenses that defendant challenges were

reasonably attributed to him, and the trial court did not clearly err by ordering defendant to reimburse plaintiff.

Finally, defendant argues that the trial court erred by determining that defendant was at fault and by awarding plaintiff more of the marital residence because of that fault. The trial judge ordered that upon sale of the residence, fifty-two percent of the proceeds should go to plaintiff. The testimony at trial showed that defendant had anger problems, yelled at plaintiff and the children and demeaned them. In addition, he made threats to burn down his father-in-law's farm. On November 25, 2001, defendant and plaintiff got into an argument during which defendant threw a glass lamp, threw a computer monitor and copier on the floor, and flipped the kitchen island over on its side. Plaintiff and the children left the marital home and went into hiding for three days until defendant was served with a personal protection order. Based on this evidence, the trial court did not err by determining that defendant was at fault for the dissolution of the marriage. In addition, the trial court did not give disproportionate weight to fault in making its property distribution. *Sparks, supra* at 158.

We remand for modification of the provisions of the judgment of divorce regarding spousal support consistent with this opinion. In all other aspects, we affirm. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Pat M. Donofrio